

Hon. John C. Coughenour

IN THE UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF  
WASHINGTON AT SEATTLE

LILIAN ILETO, on behalf of the Estate  
of JOSEPH ILETO,

Plaintiff,

Vs.

LOANER TOO, a/k/a , LOANER II,  
LOANER, INC . LOANER TWO  
PAWNSHOP, LOANER PAWN SHOP,  
THE ESTATE OF JOHN ST. JOHN, and  
DAVID MCGEE

Defendant.

Case No.: 2:06-cv-01583

FIRST AMENDED COMPLAINT

**I. INTRODUCTION**

1.1 Plaintiff Lilian Iletto is the mother of deceased Joseph Iletto, and has petitioned the Superior Court for San Bernardino County, where Joseph Iletto resided prior to his death, to be appointed the Administrator for the Estate of Joseph Iletto.

1.2 This case arises under the wrongful death and survivorship statutes of the State of Washington. It is brought against Loaner Too a/k/a Loaner II, Loaner, Inc., Loaner Two, Loaner Two Pawnshop, Loaner Pawn shop and its agents, employees and

1 owners (hereinafter referred to as "Loaner"), the Estate of John St. John, as successor in  
2 interest to John St. John, former owner, supervisor and employee of Loaner, and David  
3 McGee for their negligent failure to adequately investigate the criminal and mental health  
4 history of one Buford Furrow, Jr. to whom they supplied a firearm, the negligent failure  
5 to require Furrow to complete and submit mandatory federal firearm reporting forms, the  
6 negligent failure to comply with state and federal firearms laws, the negligent failure to  
7 adequately train and supervise their employees in the proper manner of complying with  
8 state and federal firearms law, and other negligent acts alleged herein or as will be proven  
9 at trial. As a proximate result of such acts of negligence Plaintiff's decedent Joseph Iletto  
10 was killed by Buford Furrow using the firearm supplied to him by the defendants.  
11

## 12 **II. PARTIES, JURISDICTION AND VENUE**

13  
14 2.1 Plaintiff Lilian Iletto has petitioned the Superior Court for San Bernardino  
15 County, California, where decedent Joseph Iletto resided prior to his death, to be  
16 appointed as the Administrator of the Estate of Joseph Iletto. At such time when the San  
17 Bernardino County Superior Court appoints Lilian Iletto as the Administrator of the  
18 Estate, Plaintiff will seek to amend this Complaint to so state.  
19

20 2.2 Defendant Loaner Too, aka Loaner II, Loaner, Inc., Loaner Two, Loaner  
21 Two Pawnshop, Loaner Pawn Shop ("Loaner") is in the business of pawn shop  
22 operations, and the sale of firearms, in Everett, Snohomish County, Washington.  
23

2.3 Defendant Estate of John St. John, is a legal entity filed in Snohomish County Washington, and administered by attorney Russ Juckett, and this Estate is the successor in interest and liable for the acts of John St. John, deceased, the former owner, supervisor and employee of defendant Loaner as alleged herein. A timely claim has been filed against the Estate of John St. John by plaintiff.

2.4 Defendant David McGee is believed by plaintiff to reside in Pacific County Washington, is an heir to the Estate of John St. John, is named in his will, and was at all relevant times and agent and employee of Defendant Loaner.

2.5 Diversity jurisdiction is vested in this court by virtue of the fact in that the Plaintiff and Defendant are residents of different states and the amount in controversy exceeds the sum of \$75,000 (Seventy-five thousand Dollars).

2.6 Venue exists in this district because the negligent acts committed by the defendants were principally committed within the Western District of Washington.

### III. STATEMENT OF FACTS

3.1 Plaintiff's decedent and son Joseph Iletto, 39, was a mail carrier working for the United States Postal Service working in Chatsworth in Los Angeles County, California. He was of Filipino descent. Prior to his death, he lived with his mother, was an excellent postal letter carrier, and had an avid interest in chess. His mother, Lilian Iletto, was "financially dependant" upon Joseph Iletto as that term is defined under Washington statutes and law.

1           3.2     On August 10, 1999 Joseph Iletto was working his assigned route as a mail  
2 carrier in the Chatsworth area of the San Fernando Valley of California, when he was  
3 approached by Buford Furrow, Jr. Mr. Iletto got out of his postal vehicle. Furrow at the  
4 time was carrying a concealed weapon, a 9mm model Glock 26 firearm, Serial Number  
5 BSM901US, which he had acquired from the defendants.  
6

7           3.3     Using the ability to conceal the Glock firearm from Mr. Iletto, Mr. Furrow  
8 asked Mr. Iletto if he would mail a letter for him in order to induce Mr. Iletto to approach  
9 him. When Mr. Iletto was within firing range (approximately 25 feet away) Mr. Furrow  
10 pulled the Glock firearm from its place of concealment and shot him twice in the front of  
11 his body. Mr. Iletto then turned to run away from Mr. Furrow and seek shelter when Mr.  
12 Furrow then shot him seven times in the back and head, which caused him fatal injuries.  
13

#### 14                   **IV. CAUSE OF ACTION FOR NEGLIGENCE**

15           4.1     Plaintiff sues under the laws of the State of Washington including for  
16 wrongful death and survivorship under RCW 4.20.010 *et. seq.* and RCW 4.20.046.

17           4.2     On or about May 21, 1999, Buford Furrow was convicted of second  
18 degree assault, a felony, in the State of Washington. While he was in custody awaiting  
19 trial for this offense, he was involuntarily committed to a mental hospital. He was  
20 sentenced to jail. After serving his in jail time he was released on parole. On information  
21 and belief Furrow had previously pawned a Glock Model 26 pistol, serial number  
22 BSM901US, to Loaner in Everett, Washington. Under Washington state law, WA REV  
23 CODE Section 9.41.120, no person other than a duly licensed firearms dealer shall make  
24

1 any loan secured by a mortgage, deposit or pledge of a pistol. On information and belief,  
2 at the time Furrow pawned the Glock 26, and at all times relevant to this complaint,  
3 Loaner was a federally licensed and state licensed firearms dealer and subject to all the  
4 federal and state statutes regulating firearms dealers.

5  
6 4.3 Some time subsequent to pawning the Glock 26, Furrow returned to  
7 Loaner and received back the Glock 26. At the time of delivering the Glock 26 back to  
8 Furrow defendants were required by federal and state law to fill out those portions of the  
9 Federal Firearms Transaction Records, Form 4473. This form was required to be filled  
10 out by the licensed dealer transferring or delivering the pistol. Defendants were required  
11 by federal and state law to have the person receiving the pistol in this case, Mr. Furrow,  
12 fill out other portions of the 4473 in the dealer's presence. The relevant state and federal  
13 statutes related to the 4473 form are: 18 U.S.C. § 923(g)(1)(A) and WA REV CODE  
14 9.41.090(5) and 9.41.110(9)(a). All the foregoing statutes are state and federal statutes  
15 applicable to the sale or marketing of firearms within the meaning of 15 USC Section  
16 7903(5)(A)(iii).

17  
18 4.4 At the time of delivering the pistol back to Furrow, defendants were not  
19 allowed under federal law to fill in any portion of the 4473. Rather it was required to be  
20 filled out by the person receiving the pistol. Defendants were not allowed by state and  
21 federal law to transfer a pistol to a person whom they had reasonable cause to believe was  
22 convicted of a felony; and were not allowed under federal and state law to transfer a  
23 pistol to a person whom the dealer knows or has reasonable cause to believe has been  
24

1 involuntarily committed for mental health treatment. The relevant state and federal  
2 statutes are found at 18 U.S.C. § 923(g)(1)(A), 18 U.S.C. § 922(d)(1) and (4), WA REV  
3 CODE 9.41.080 and each of the foregoing statutes is a statute applicable to the sale or  
4 marketing of firearms within the meaning of 15 USC 7903(5)(A)(iii).

5  
6 4.5 At the time Furrow came to retrieve the Glock 26 from Loaner. An agent,  
7 employee and manager of Loaner, Defendant David McGee and/or another employees of  
8 Loaner, acting on behalf of and within the scope of their employment for Loaner, and  
9 John St. John, knowing or having reasonable cause to believe Furrow was ineligible to  
10 receive the pistol because he was adjudicated mentally incompetent within the meaning  
11 of 18 U.S.C. § 922(d)(4) and Wash Rev. Code 9.41.040(2)(a)(ii) having been  
12 involuntarily committed to a mental hospital; and/or had been convicted of a felony  
13 making him ineligible to possess or purchase a firearm under state and federal law,  
14 nevertheless negligently transferred and delivered the Glock 26 to Furrow in violation of  
15 18 U.S.C. § 922(d) and Wash Rev. Code 9.41.080.

16  
17 4.6 In addition, on information and belief, Plaintiff alleges that the Loaner  
18 employee who delivered the pistol to Furrow or some other Loaner employee aware of  
19 the delivery of the pistol to Furrow, knowing or having reasonable cause to believe that  
20 delivery of the Glock 26 to Furrow was not allowed by state and federal law, at some  
21 time filled in and forged that portion of the 4473 required by law to be prepared and  
22 signed by the person to whom the pistol is delivered. Mr. McGee and such person  
23 employed by Loaner and John St. John forged Furrow's signature, back dated the Form  
24

1 4473, and misstated his place of birth such person knew or should have known that  
2 Furrow was required to fill in that portion of the Form 4473 in the presence of the dealer  
3 as required by law.

4           4.7 Plaintiff alleges Defendants negligently trained, monitored and supervised  
5 their employees in the proper performance of their legal duties in transferring firearms  
6 and obtaining identification and other information from a person to whom they were  
7 transferring firearms, negligently failed to train its employees in the legal requirements,  
8 including those cited in this Amended Complaint, for the transfer of firearms under state  
9 and federal law, and failed to comply with legal requirements in delivering the pistol to  
10 Furrow as described in this Amended Complaint, in violation of the cited statutes, all of  
11 which are statutes applicable to the sale or marketing of firearms within the meaning of  
12 15 USC Section 7903(5)(A)(iii). Therefore this lawsuit is outside the purview of 15 USC  
13 Sections 7901 - 7903, known as the Protection of Lawful Commerce in Arms Act.  
14

15           4.8 As a proximate result of the negligence of defendant as alleged herein, Mr.  
16 Furrow was able to obtain, use and conceal the Glock firearm described above, in  
17 murdering plaintiff's, decedent Joseph Iletto. As a proximate result of the defendant's  
18 negligence as alleged herein, Mr. Iletto was shot and killed by Furrow using the Glock  
19 firearm. Mr. Iletto and his Estate suffered pre-death pain and suffering (including in his  
20 vain attempt to flee Mr. Furrow), the loss of life expectancy, the loss of enjoyment of life,  
21 the loss of income, the loss of financial support to Lilian Iletto, and any and all other  
22  
23  
24

1 injuries and damages allowed by law. Plaintiff makes no claim of any defect or  
2 malfunction of the Glock 26 firearm identified herein, nor any claim of product liability.

3 **V. FRAUDULENT CONCEALMENT OF CAUSE OF ACTION**  
4 **(TOLLING THE STATUTE OF LIMITATIONS)**

5 5.1 The defendants fraudulently concealed from plaintiff the  
6 negligence/wrongful death and survivorship causes of action by falsely filling in and  
7 forging the signature of Buford Furrow on the Form 4473, which was attached as Exhibit  
8 1 to the Complaint on file. On information and belief, Loaner and David McGee forged  
9 the signature of Mr. Furrow and inappropriately filled in the other information contained  
10 on this form (some of which was inaccurate) after Mr. Furrow had committed the  
11 homicide of Joseph Iletto and Loaner became aware of Mr. Furrow's involvement in a  
12 crime spree in the Los Angeles area.

14 5.2 In addition, the defendant Loaner filed this forged Form 4473 as an exhibit  
15 to pleadings in California state court in support of its legal position that the court had no  
16 jurisdiction over Lilian Iletto's lawsuit brought in the State of California. That lawsuit  
17 was dismissed without prejudice due to lack of personal or long-arm jurisdiction over  
18 Loaner at the urging of Loaner.

20 5.3 By such fraudulent concealment the defendant sought to mislead the  
21 plaintiff, her family and the courts in California to believe that what is attached as Exhibit  
22 1 to the Complaint on file was a true and accurate copy of a U.S. Treasury Department  
23 Form 4473 signed by Mr. Furrow. In fact, such document was not signed by Mr. Furrow  
24



1 or filled out by him, as Plaintiff only discovered in 2005. Mr. Furrow's signature is a  
 2 forgery, the date of the transaction is misstated, and Mr. Furrow's birthplace is misstated.  
 3 Each of these actions were fraudulent acts designed to mislead Plaintiff as to her causes  
 4 of action herein. These are all fraudulent acts which Plaintiff did not discover or in the  
 5 exercise of reasonable diligence would not have discovered within three years of the date  
 6 of filing of the original Complaint.  
 7

## 8 **VI. PRAYER FOR RELIEF**

9 WHEREFORE, the plaintiff asks for relief as follows:

10 (1) all special damages including loss of income, loss of economic  
 11 value of the estate, medical bills, funeral expenses, counseling costs, loss of the benefit of  
 12 the financial and emotional support to all the applicable statutory beneficiaries to whom  
 13 such support was provided, and any and all other special damages allowed by law;  
 14

15 (2) for all general damages allowed under the Washington State law  
 16 allowing wrongful death and survivorship actions including but not limited to the pre-  
 17 death pain and suffered by Joseph Iletto, loss of life expectancy, loss of the enjoyment of  
 18 life, the loss of love, companionship and affection of his surviving family, and any and  
 19 all such other general damages that are allowed by law;  
 20

21 (3) for costs of suit and attorneys fees that are allowed by law;

22 //  
 23 //  
 24 //

(4) for such other relief as the court deems just.

DATED this 13th day of April, 2007.

/s/ Michael E. Withey

MICHAEL E. WITHEY, WSBA #4787

Law Offices of Michael E. Withey

Two Union Square

601 Union Street, Suite 4200

Seattle, Washington 98101

Phone: 206-405-1800

Fax: 866-793-7216

Email: [mike@witheylaw.com](mailto:mike@witheylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

rdearie@omwlaw.com

I hereby certify that I have caused this document to be served via U.S. Postal Service, facsimile or messenger to the following:

None

DATED this 13th day of April, 2007.

/s/ Michael E. Withey  
MICHAEL E. WITHEY, WSBA #4787  
Law Offices of Michael E. Withey  
Two Union Square  
601 Union Street, Suite 4200  
Seattle, Washington 98101  
Phone: 206-405-1800  
Fax: 866-793-7216  
Email: [mike@witheyllaw.com](mailto:mike@witheyllaw.com)